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10/810,037	03/26/2004	Matthew A. Purdy	2000.113500	8441
23720	7590	06/08/2009		
WILLIAMS, MORGAN & AMERSON			EXAMINER	
10333 RICHMOND, SUITE 1100			DUNCAN, MARC M	
HOUSTON, TX 77042				
ART UNIT		PAPER NUMBER		
2113				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MATTHEW A. PURDY

Appeal No. 2008-004599
Application No. 10/810,037
Technology Center 2100

Mailed: [June 8, 2009]

Before DALE M. SHAW *Chief Appeals Administrator*

ORDER REMANDING TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on June 11, 2008. A Docketing Notice was mailed and Appeal No. 2008-4599 was assigned on July 21, 2008. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure*

(MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed on November 15, 2008, is deficient because the "Evidence Relied Upon" section fails to include the reference Atkinson et al. (2004/0029029) cited on page 8 in the Examiner's Answer's grounds of rejection of Claims 9 and 22 under 35 U.S.C. § 103(a).

Appropriate correction is required.

CONCLUSION

Accordingly, it is

ORDERED that this application be remanded to the Examiner:

- 1) to issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and

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2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/llw

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